IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE

Second Appeal no. 121 of 2006.

Pandurang Maruti Patil ..Appellant

vs.

1. Bajirao Maruti Patil
and others ..Respondents

Shri S.M.Railkar for appellant.
Shri Milind Deshmukh for respondent no.1

CORAM: S.C.DHARMADHIKARI J
5th September,2007

P.C.

1. Heard Shri Railkar for the appellant and Shri Deshmukh for the respondent no.1. Other respondents though served are absent.

2. The second appeal is directed against the judgment and order dated 11th November, 2005 in Reg.Civil Appeal no.444 of 2004.

3. Reg.Civil Appeal was against the judgment and decree of the learned Civil Judge (Jr.Dn.), Panhala in Reg.Civil Suit No.130 of 2002 delivered on 1st October, 2004.

4. The appellant/original plaintiff challenged the judgment and decree of the Trial Court dismissing the suit for partition and separate possession.

5. It is argued before me by Shri Railkar that 7/12 extracts in respect of the suit property would demonstrate that the lands donot belong to the
appellant before me but to a Trust, namely, Hasrat Peer.

6. The Trial Court relied upon these extracts and dismissed the suit. The Trial Court was of the opinion that the material has not been placed before it to show that original defendant no.1 had been granted any right by the said Trust so as to conclude that the lands belonged to him as the owner.

7. The lower Appellate Court in para 20 of its judgment has referred to 7/12 extracts and after perusal thereof has held that the name of original defendant no.1 has been recorded as the owner under the guardianship of his father, the original defendant no.2. The area owned and possessed by them has been specifically mentioned in the 7/12 extracts. In fact, there is no dispute between the parties with regard to this aspect. The lower Appellate Court was of the view that if the property belongs to Deosthan/Public Charitable Trust and the defendants have no documents to establish their right therein, then, it was

incumbent upon the defendants to have placed this aspect in their pleadings. There was no pleading on this point and, therefore, no amount of evidence de hors the pleadings can be of any assistance are the findings and conclusion of the lower Appellate Court.

8. Despite the usual pursuasive efforts Shri Railkar could not point out to me as to how this finding can be said to be vitiated, leave alone, it being termed as perverse since the finding is based on appraisal of the material before the Court and when admitted fact is that there is no plea, spedifically contending that the property belongs to the Trust, then, I see no error being committed by the lower Appellate Court.

9. It cannot be said to be a perverse finding. This being a second appeal, further appreciation and appraisal of the material is not permissible. The only submission before me, therefore, fails. No substantial questions of law is involved. The second appeal is dismissed. No costs.

10. Civil Application, if any, does not survive in the light of disposal of the second appeal.

(S.C.DHARMADHIKARI J.)